46. However, even if it were possible to conclude that elimination of the 35 Mile Rule unambiguously leads to a solution more closely resembling the outcome of a competitive market, the Commission may not be justified in proceeding. The Commission's sole charge is not to examine what economists consider to be the benefits of a regulatory action. The Commission is charged with promoting the public welfare. Public welfare includes factors outside the realm of economic theory. Balancing these factors against the potential gains in efficiency would not necessarily justify eliminating the rule, even if the gains were not so speculative.

47. The limitation introduced by the 35 Mile Rule involves at most a minor intrusion into an already very imperfect market. This regulatory intrusion has a specific purpose. It's purpose is to enhance the public welfare by ensuring that local broadcast outlets remain viable in all of the markets covered by Commission jurisdiction. It is not clear that economic efficiency, narrowly defined, and economic forces transmitted through the marketplace provide sufficient justification to support the elimination of the 35 Mile Rule as proposed.

Exhibit 2

Survey of

Factors Affecting Television Competition

18. Market Structure. The competitive market for television broadcasting bears little resemblance to the "level playing field" the Notice seeks to foster in this proceeding. Competition among television stations is hampered by severe barriers to entry created by the limited number of television channels technically available in any given market and the manner in which the Commission is required to distribute television licenses, frequencies, hours of operation and power among the several States and communities. Competition among the relatively few television stations that exist in any given market is further impeded by the considerable technical and economic differences existing between UHF and VHF television stations.

19. The allocation scheme for commercial television broadcasting is a historical product of the interplay among television technology, manufacturing interests, broadcast interests and government regulation.[14]. Commercial television broadcasting was first authorized by the Commission in 1941.

[14]See "The Historical Evolution of the Commercial Network Broadcast System," New Television Networks: Entry, Jurisdiction, Ownership and Regulation Volume II (hereinafter "New Television Networks II"), Federal Communications Commission (1980) at pp. 65-91.

It began as an outgrowth of the experimental television broadcasting programs carried out by various equipment manufacturers, notably RCA, in the 1930's. The first commercial stations operated in the VHF band, which was then the only available spectrum for the service. This pre-World War II VHF band had 18 television channels. New Television Networks II at pp. 66-69. At the time further television licensing was suspended due to World War II, ten commercial television stations were in operation.

20. At the end of World War II, the Commission was called upon to mediate numerous demands made upon the VHF band by television, military, FM and mobile radio users. It recognized that 25 to 30 TV channels would be needed to develop a competitive nation-wide television service. However, television technology for the UHF band was not yet available. Under pressure from RCA and other television manufacturers advocating immediate rapid growth of television, the Commission adopted a compromise allocation position in November 1945. Under the compromise, commercial television was allowed to develop on thirteen channels in the VHF band with the understanding that it would eventually move entirely into the UHF band. Television Networks II at pp. 69-71. In the ensuing three years the Commission authorized an additional 113 television stations. On September 20, 1948, with 303 television applications pending, the Commission issued a freeze

on television authorizations that would last almost four years. Id. at 71.

21. Commercial television's development during the 1948-1952 television freeze scuttled the FCC's plan to equalize facilities-based television competition by placing television solely in the UHF band. In this period the number of operating VHF television stations increased from 37 to 108. New Television Networks II at 71. By 1952 seventeen million television receivers had been sold in the United States, none of which was capable of receiving UHF signals. Id. at 74.

22. The history of network television from 1952 to 1964 provides some striking examples of serious competitive distortions created by the barriers to entry embodied in Commission's television allocation plan. Starting in 1952, the Commission followed a policy of using both VHF and UHF allotments to provide for a nation-wide television service. See Sixth Report and Order on Television Assignments, 41 FCC 148 (1952). It was not until 1962, however, that new television sets were required to be equipped to receive UHF stations. See Public Law 87-529, approved July 10, 1962, 76 Stat. 150. Meanwhile, in 1955, the limited availability of VHF outlets in major markets led to the demise of the nation's fourth television network, the DuMont Television Network. New Television Networks II at pp. 88-91.

23. By the early 1960's the shortage of competitive television allocations in major markets was also threatening

the viability of the third television network, the American Broadcasting Television Network.[15] This threat to network competition was so severe that the Commission instituted the rule making in Docket No. 13340 to relax its VHF allocation standards. This allowed a third VHF station to be "moved in" to several major television markets. See e.g. New Orleans Television Corp., 23 RR 1113 (1962); Peninsula Broadcasting Corp. , 45 FCC 1662 (1964); St. Anthony Television Corp., 45 FCC 1363 (1964); and WTEV Television, Inc., 45 FCC 163 (1962).

24. The Television Table of Allotments' barriers to entry are not the only factors distorting the competitive structure of television broadcasting. Even when all other competitive forces are equal, competition in television broadcasting is significantly hampered by the serious

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[15] The Network Inquiry Special Staff made the following observation on the 1952 television allocation scheme of the Sixth Report and Order:

> The geographical aspects of the Commission's allocation plan virtually assured that...only two strong networks could emerge quickly. For example, a strong national network would require access to most of the top 50 markets. Under the allocation scheme of the Sixth Report only seven of the top fifty markets received 4 or more VHF assignments, 20 received 3 VHF assignments, 16 received 2 VHF assignments and 2 markets received only 1 VHF assignment. This left 5 of the top 50 markets with only UHF assignments. As a consequence of this scheme, one network could reach 45 of the top 50 markets with VHF stations and the second could reach 43, while a third network would be able to reach only 27 and a fourth network would have access to VHF stations in only 7 of the top 50 markets.

New Television Networks II at 74.

competitive disparities existing between UHF and VHF television stations. Since the Sixth Report and Order adopted a policy of concentrating VHF stations in larger communities[16], it is almost certain that the stations in overshadowed television markets are competitively disadvantaged UHF stations.

25. In September 1979, the UHF Comparability Task Force of the Office of Plans and Policy issued its report, "Comparability for UHF Television,"[17] detailing the competitive distinctions between UHF and VHF television broadcasting. In analyzing the UHF handicap, the staff focused on both reception and transmission characteristics of UHF television broadcasting.

26. The staff's analysis of UHF reception characteristics noted that UHF reception is adversely affected by the "dipole factor", i.e. the decrease in effectiveness of receive antennas as frequency increases. As a result of this phenomenon, UHF receive antennas must have higher gain than VHF receive antennas to achieve equivalent reception. UHF Comparability at 43. Unfortunately, the UHF receive antennas typically supplied with television receivers are less effective than the VHF receive antennas supplied. Id. at 46.

27. Another reception factor adversely affecting UHF broadcasting is the receiver noise level. Noise is the

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[16] Sixth Report and Order, 41 FCC at 168.

[17] This report is referred to hereafter as "UHF Comparability".

extraneous radio frequency energy generated by a variety of sources such as automobile ignitions, thunderstorms and electronic components. UHF Comparability at 171. It appears on the television screen as the perceived "snow" in a television image. Id. at 59. UHF receivers typically generate a significantly greater amount of noise than do VHF receivers. Some representative receiver noise figures are 12.2 dB for UHF, 7.5 dB for high band VHF and 6.2 dB for low band VHF. Id. at 60.

28. UHF television is not just inferior to VHF television in the area of reception. The VHF band has advantages over UHF in signal generation and propagation, as well. Variations in terrain causing "shadowing" degrade UHF signals significantly more than VHF signals. UHF Comparability at 69. Additionally, UHF signals cannot penetrate building materials as effectively as VHF signals.[18] This factor worsens the UHF handicap in areas where indoor receive antennas are common. The Commission's staff also noted that signal fading caused by atmospheric conditions can be as much as 10 dB greater for UHF signals than for VHF. Id. at 64.

29. The FCC's rules attempt to compensate for the inferior reception and propagation characteristics of UHF television by authorizing UHF stations to operate with a higher

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[18] Experiments conducted on channels 2 and 31 in New York City found UHF signal attenuation due to absorption by building materials to be between 5 and 10 dB greater that VHF signal attenuation. UHF Comparability at p. 65.

effective radiated power (ERP) than VHF stations. The maximum ERP of a UHF station is 5000 KW[19], while high band VHF stations are limited to 316 KW ERP and low band VHF stations are limited to 100 KW ERP. UHF Comparability at 73.

30. Operating at very high effective radiated power has some significant drawbacks for UHF stations, however. The electrical power required for a full power UHF operation may be 20 to 25 times the amount of power required for a full power low band VHF station. Id. at 75. In 1978, the annual transmitter operating cost of a 5000 KW ERP UHF station, including depreciation on equipment, was $447,500. This compared to a $55,360 annual transmitter operating cost for a full power low band UHF. Id. at 76. Indeed as a percentage of 1978 annual operating costs, transmission costs were 1.48 percent for a full power low band VHF station, 2.2 percent for a full-power high band VHF station, 12 percent for a UHF station operating with 2250 KW ERP and 22.6 percent for a UHF station operating with 5000 KW ERP. Id. at 75-77.

31. Given the extremely high cost of operating a 5000 KW UHF station, it is not surprising that only three percent of licensed UHF stations operate at maximum ERP. This compares to the 95 percent of low band VHF stations and 76 percent of high band VHF stations operating at maximum ERP. UHF Comparability

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[19]Within 250 miles of the Canadian Border, UHF stations are limited to 1000 KW ERP in the absence of Canadian consent to a higher power. Agreement Effectuated by Exchange of Notes, TIAS 2594. Rod. Reg. 2d (P&F), Current Service, One Star Volume, 41:141 (1952).

at 126. The failure of most UHF stations to achieve maximum facilities has aggravated the signal coverage disadvantages UHF stations face in competing with VHF stations.

32. The Commission's UHF Comparability Task Force quantified the UHF coverage handicap by comparing the reception of average UHF and VHF stations by typical receivers using indoor and outdoor receive antennas. UHF Comparability at 90-97. Graphs depicting the results of this study are appended hereto as Attachment A.

33. As demonstrated by the graph representing indoor reception, average UHF stations are received in less than fifty percent of indoor receive locations twenty two miles distant from the UHF transmitter. This reduced level of indoor reception is achieved by low band VHF stations at 28 miles and by high band VHF stations at 34 miles. Attachment A, p.1. Thus the present non-network exclusivity rule corresponds roughly to the point where the average high band VHF signal is serving less than fifty percent of indoor receive sites.[20]

34. The graph at Attachment A, p.3, depicting outdoor reception, shows that the rate of coverage area gained per unit distance from the transmitter is the same for UHF and VHF stations over the first thirty miles. Thereafter UHF coverage gain per unit distance decreases and becomes almost zero at

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[20]At this distance, the average UHF station is serving less than eleven percent of indoor receive sites and area gained per additional mile from the transmitter becomes insignificant. Attachment B at pp. 1-2.

sixty miles. At this distance, the UHF station's total area coverage is 6200 square miles. By contrast, the rate of coverage gain per unit distance for low band VHF outdoor reception does not decrease until 72 miles from the transmitter and does not approach zero until 100 miles from the transmitter. At that point the average low band VHF station covers 18,200 square miles, almost three times the area covered by an average UHF station.

35. The UHF Comparability Task Force also examined actual UHF coverage in fourteen intermixed markets to better quantify the UHF coverage handicap. UHF Comparability at 107-16. The study found that the average UHF station served 52 percent of the VHF population where indoor antennas were used and 65 percent of the VHF population where outdoor antennas were used. Id. at 111. In general, the UHF handicap was less in larger markets.[21]

36. In the course of their study, the Commission's staff found that the most drastic coverage disparities between UHF and VHF stations occurred with respect UHF stations located on the fringes of major markets. For example, a 2000 KW UHF station located on the edge of the Washington, D.C. market served only six percent of the population covered by Washington, D.C.'s VHF stations, assuming indoor reception.

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[21]The 24 UHF sample stations in the top 50 markets had a predicted population coverage of 53 percent and 72 percent for the indoor and outdoor antenna, respectively. In the second 50 markets the equivalent figures for 14 stations were 48 percent and 51 percent. Id. at 111-12.

The staff found that this severe coverage disadvantage was "generally similar for other outlying stations analyzed." Id. at 113. It concluded that "Since these stations exhibit a significant population disadvantage even when area coverage is comparable, the handicap faced by this type of station is attributable to a location handicap at least as much as it is attributable to a UHF handicap." Id. at 113-14.[22]

37. The UHF Comparability Task Force recognized that inferior programming can add substantially to the adverse effects of the UHF handicap. UHF Comparability at 159. Less attractive programs interact with the economics of transmitting and receiving UHF signals to increase the UHF product handicap. They reduce the gain in audience and revenue that can be expected from an increase in signal coverage. This reduction in revenue discourages investment in superior transmitting facilities and further increases the UHF picture quality handicap. Id. at 163.

38. The UHF programming handicap is a particularly troubling problem because, even with equally attractive programming, the economies of UHF broadcasting dictate less coverage for UHF stations than for VHF stations. Thus it is generally not profitable for a UHF station to invest as much in programming as VHF stations do. UHF Comparability at 162.

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[22]Thus the Commission's staff has clearly identified the "double whammy" faced by overshadowed UHF stations. They start out technically inferior to large market VHF stations and are further hampered by an inability to locate facilities near major population centers.

39. Unfortunately, the price UHF stations must pay for a program in a given market does not fully reflect the lower revenues that can be expected to result from the disparity between UHF and VHF signal coverage. The presence of VHF stations in the market tends to inflate the price paid for programs by UHF stations to a price close to that paid by VHF stations. UHF Comparability at 161.

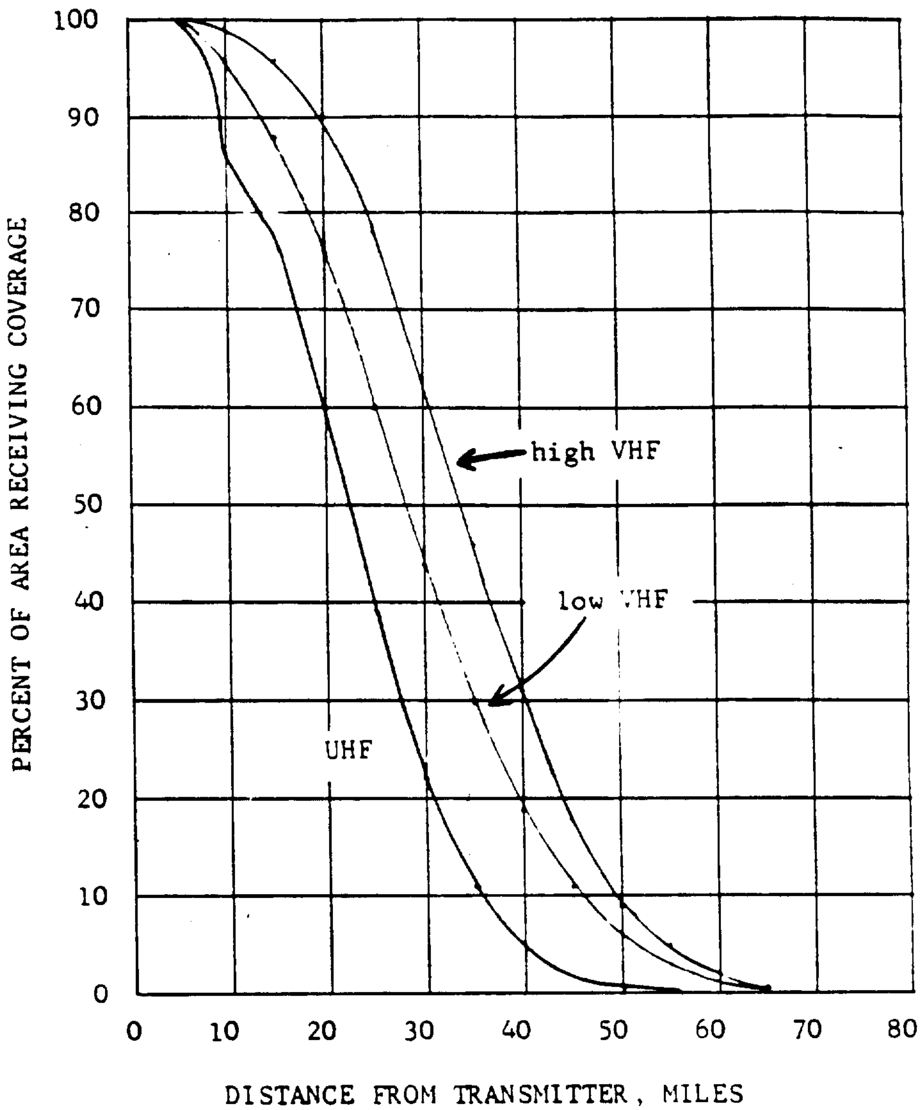

FIGURE 6-2. Indoor contour. Percent of area receiving coverage versus distance from transmitter in areas of average terrain.

Source: APT model for the indoor antenna contour.

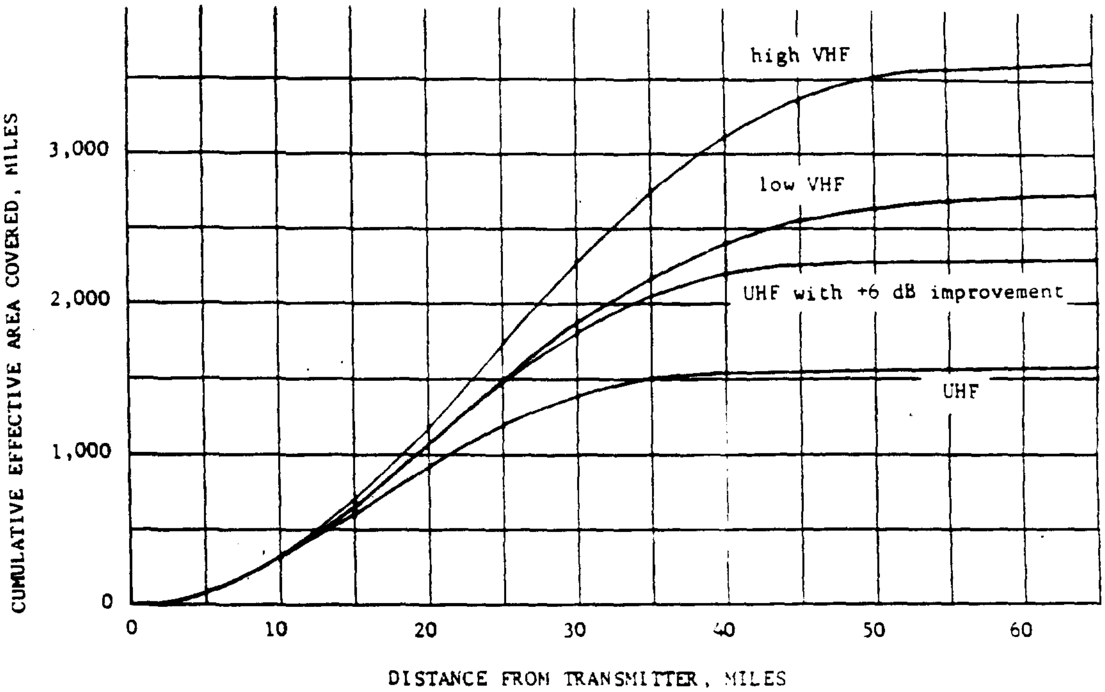

Figure 6-4. Cumulative effective area covered versus distance from transmitter, using assumptions for indoor receiving antennas in urbanized areas.

Source: APT model for the indoor antenna contour.

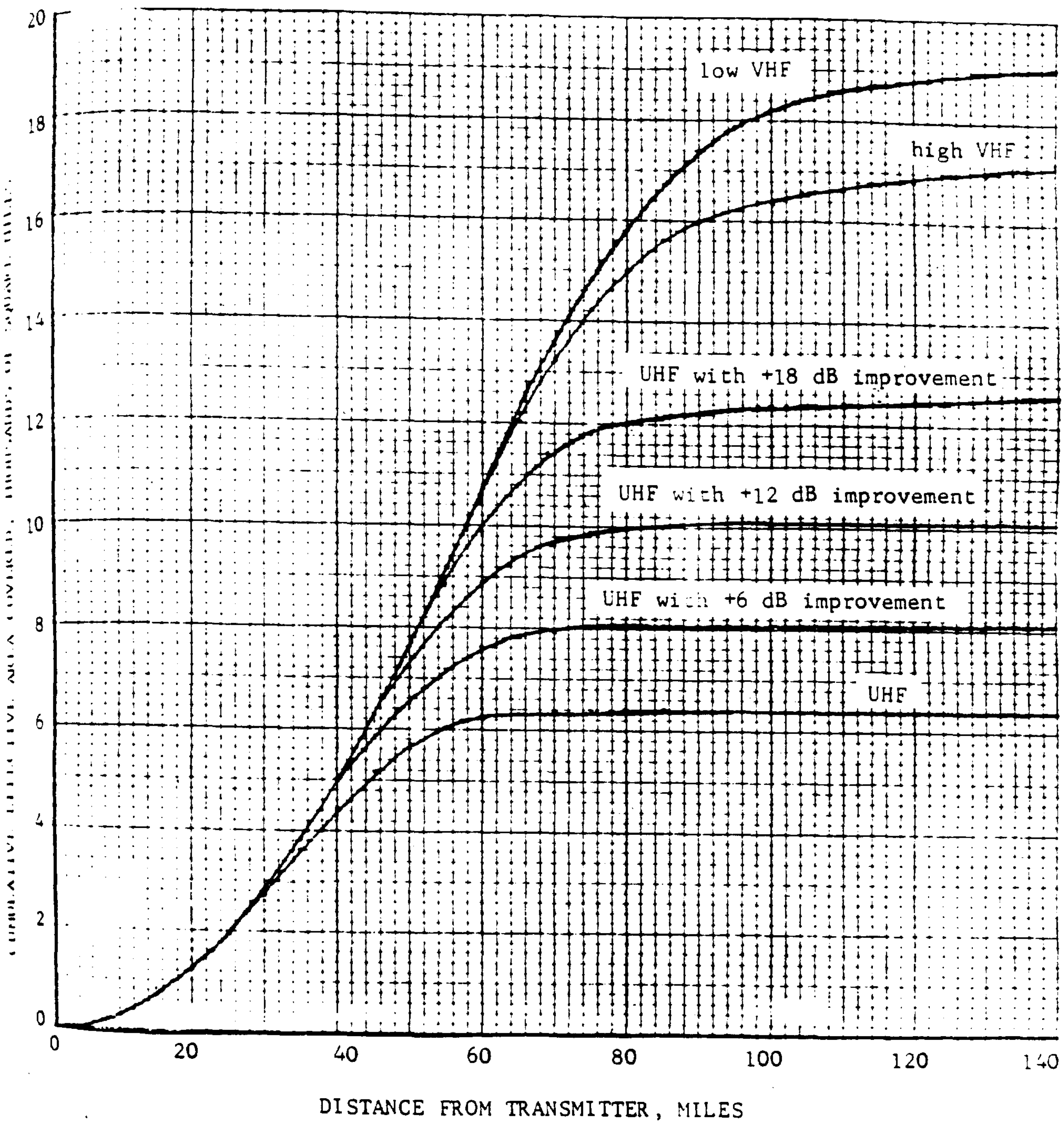

Figure 6-3. Cumulative effective area covered versus distance from transmitter, using assumptions for outdoor receiving antennas.

Source: APT model for the modified Grade B contour.

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1776 K STREET, N. W.

WASHINGTON, D. C. 20006

(202) 429-7000

WRITER'S DIRECT DIAL NUMBER

(202) 429-7025

October 30, 1986

Mr. William J. Tricarico
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket 84-111
<u>Orlando-Daytona Beach Market Redesignation</u>

Dear Mr. Tricarico:

TV 56, Ltd., permittee of television station WAYK (formerly WSCT), Melbourne, Florida, has pending before the Commission a Petition for Reconsideration of the redesignation by the Commission of the Orlando-Daytona Beach television market (as listed in Section 76.51 of the Commission's Rules) to include Melbourne and Cocoa, Florida. The purpose of this letter is to reference in the above-captioned docket the attached letter, filed this day with the Commission, relating to the request by WAYK for a waiver of Section 73.658(m). In that regard, however, TV 56, Ltd. is willing to dismiss its Petition for Reconsideration of the market redesignation if its waiver request is granted.

If any questions arise as to these matter, please advise the undersigned.

Yours truly,

Barry D. Wood

Barry D. Wood
Attorney for
TV 56, Ltd.

Enclosure

cc w/enc: Counsel of Record

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WRITER'S DIRECT DIAL NUMBER
(202) 429-7025

October 30, 1986

Mr. William J. Tricarico
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: WAYK(TV), Melbourne, Florida
Waiver Request

Dear Mr. Tricarico:

On October 1, 1986, TV 56, Ltd., permittee of television station WAYK, Melbourne, Florida, filed an emergency request for a waiver of Section 73.658(m) of the Commission's Rules. The purpose of the waiver would be to free WAYK from the overbroad territorial exclusivity Orlando and Daytona Beach stations are now able to impose against it.

TV 56, Ltd. recognizes that the Commission may revisit Section 73.658(m) at some time in a general fashion. However, WAYK's inability to obtain programming on a reasonable basis poses an immediate problem. Therefore, this is to indicate that TV 56, Ltd. would be willing to accept an interim waiver of Section 73.658(m), until such time as the Commission addresses the larger issues.

We submit that TV 56 has submitted an adequate factual basis for the waiver, and has demonstrated that it is providing a unique public service to the citizens of the Melbourne area. In that regard, we would like to reemphasize that TV 56 is broadcasting the only local news show directed primarily at the needs and interests of the Melbourne area. In addition, it has undertaken other public affairs programming such as a recent Candidates Forum where all candidates for local office were provided free air time to state their positions.

Mr. William J. Tricarico
October 30, 1986
Page Two

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Unless the Mass Media Bureau acts expeditiously on the waiver request, this valuable kind of public service will disappear. Therefore, pursuant to the Commission's mandate to further the public interest, we urge a prompt grant of an interim or permanent waiver.

Yours truly,

Barry D. Wood

Barry D. Wood
Attorney for
TV 56, Ltd.

cc: Ralph A. Haller

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
TV 56, Ltd. (WAYK(TV)) Melbourne, Florida	))
	)
Waiver of Section 73.658(m) of the Commission's Rules	))

To: The Mass Media Bureau

EMERGENCY PETITION FOR WAIVER

TV 56, Ltd. ("TV 56"), permittee of WAYK(TV), Channel 56, Melbourne, Florida, by its attorneys, hereby requests a waiver of Section 73.658(m) of the Commission's Rules to enable WAYK to acquire programming presently carried on television stations licensed to Orlando and Daytona Beach. As demonstrated below, the requested waiver is necessary for the survival of a new independent television station providing service to a neglected area. In order to give the station a fair chance to staunch its financial hemorrhage before it is too late, TV 56 urges the Mass Media Bureau to expedite action on this request.

I. Legal Background

In the main, Section 73.658(m) prohibits television stations licensed to one community from entering into contracts which in any way limit suppliers of non-network programming from providing the same programming to stations located in a community more than 35 miles from the first community. However, there is one important exception to this 35-mile limit on the imposition of territorial exclusivity: exclusivity clauses are permitted as to all stations licensed to communities named in a hyphenated market designation, even if the communities in question are more than 35 miles apart.

The hyphenated market designations are set forth in Section 76.51 of the Commission's Rules. The designation in question here is the "Orlando - Daytona Beach - Melbourne - Cocoa" market. Because WAYK is licensed to Melbourne,[1] WAYK is forced to compete for programming purchases with stations serving Orlando and Daytona Beach, even though it is technically incapable of providing service to those large communities, and even though Melbourne is much more than 35 miles from Orlando.

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1 The Commission allocated Channel 56 to Melbourne, Florida on August 14, 1972. See Television Channel Assignment at Melbourne, Florida (Docket 19487), 24 RR 2d 1981 (1972). The channel remained fallow, however, until this year when TV 56 put WAYK on the air. At the time of the original allocation, and until well after TV 56 received its construction permit, however, Melbourne was not part of the Orlando-Daytona Beach hyphenated market under the Commission's major market rule (Section 76.51).

II. TV 56 Cannot Cover Orlando and Daytona Beach, the Principal Cities of the Hyphenated Market

A. WAYK's Market is Distinct From the Orlando-Daytona Beach-Melbourne-Cocoa Market

A strict application of Section 73.658(m) to TV 56 would be appropriate only if WAYK were attempting to serve Orlando and Daytona Beach. It is not doing so. Indeed, technical constraints imposed by the Commission preclude WAYK from reaching those areas. Because of the twenty mile spacing requirements with respect to WTGL-TV (Channel 52), Cocoa, Florida, WAYK cannot locate its transmitter at or near the tower midway between Melbourne and Orlando used by stations WMOD (Channel 43), licensed to Melbourne, and WTGL-TV. Further, the need to protect Channel 55 in Leesburg, Florida, and the requirement to provide city grade coverage of Melbourne, foreclose location of the Channel 56 transmitter at the antenna farm near Bithlo, Florida (far to the north of Melbourne) used by the Orlando stations.

These technical restraints limit WAYK to serving Melbourne and the other communities along the Atlantic Coast, not inland Orlando. (In this respect, WAYK is unlike WMOD, which has evolved into a quasi-Orlando facility.) Thus, the TV 56 tower is south of Melbourne, 65 miles from Orlando. From that site, TV 56 reaches the large stretch of Florida's east coast which receives inadequate television service from both the Orlando-Daytona Beach stations and the West Palm Beach stations further to the south. This is evident from a comparison of the coverage maps attached as Exhibit A hereto.

B. TV 56 Alone Focuses Its Coverage on the Melbourne Area

Note that no designated television market exists between Orlando and West Palm Beach, a distance of approximately 160 miles, even though the Grade B coverage of no television station in either market extends more than 65 miles in any direction. WAYK plainly fills the void between the Orlando and West Palm Beach markets.

Orlando and Daytona Beach have four commercial television stations, with applications pending for more. In addition, as noted above, WMOD and WTGL broadcast from common tower northwest of Melbourne, reaching Orlando with predicted Grade A signals. Thus, the Orlando-Daytona Beach market has a total of six commercial television broadcast services. In contrast, the communities to the south of Melbourne receive Grade A coverage from only three television stations at most. Vero Beach, for example, only receives service from one television station other than WAYK. See Exhibit B hereto.

Thus, TV 56 is filling a clear-cut need for additional service in the area stretching from Melbourne and Cocoa to Vero Beach and Fort Pierce. In fact, TV 56 is the only station whose news and public affairs programs focus on Melbourne and surrounding communities.

III. TV 56 Could Obtain Programming But For the Anomalous Application of Sections 73.658(m) and 73.51(a)

Unfortunately, TV 56 has been frustrated in achieving its goal of full local service. Even before WAYK went on the air, TV 56 was stripped of the protection of the territorial exclusivity rule by the Commission's redesignation of its major market rule to include Melbourne and Cocoa in the Orlando-Daytona Beach market. See Section 76.51(a) of the Commission's Rules, as amended by Report and Order, 57 RR 2d 685, 692-93 (1985).[2]

In late 1984 through early 1985, when TV 56 was exploring the need for this service, it was informed by a number of program vendors that they would make syndicated programming available to WAYK (then WSCT) on a reasonable basis. They indicated that program pricing would be tied to the relatively smaller size of the market that TV 56 proposed to reach. Because of the area's remoteness (much more than 35 miles from Orlando and Daytona Beach), they recognized that the Orlando and Daytona Beach stations could not require exclusivity against WAYK under Section 73.658(m) of the Commission's Rules. In addition, they realized that WAYK would

2 That amendment was prompted by the desire of WMOD and WTGL to qualify for cable carriage under the must carry rules. Due to the adoption of an entirely new must-carry structure, those considerations are now moot. Although TV 56 filed a petition for reconsideration of the market redesignation, it would withdraw that petition if it received a grant of the program waiver requested herein.

not place a Grade B contour over or near Orlando or Daytona Beach. For example, the letters attached hereto as Exhibit C clearly indicate that program suppliers were willing to supply programming to WAYK at prices consistent with its actual market size.

Once the industry became aware of the market redesignation, those programming commitments were withdrawn. Now, the Orlando and Daytona Beach stations have successfully demanded exclusivity against WAYK, using the language of Section 73.658(m) as a shield for their anticompetitive activities. See e.g., Exhibit D.

With a small revenue base limited to the Melbourne-Vero Beach area, WAYK, a truly local station, cannot compete for programming with non-local stations with much larger revenue bases. A programming budget on the order of $300,000 per year is reasonable for a station in the Melbourne-Vero Beach market. However, that budget must be increased to at least $3,000,000 in order to compensate program suppliers for losing the chance to sell a given program in the more lucrative Orlando market. That kind of cost is far beyond the capacity of a small market station such as WAYK. WAYK's advertising revenues, coming as they do from the Melbourne-Vero Beach area alone, cannot be expected to rise to the multi-million dollar level necessary to sustain such exorbitant program rates. For example, while WAYK charges

$95 for a spot on its local news, an equivalent spot on one of the Orlando stations costs $1,200.

In effect, the Commission's rules act to deprive WAYK and its viewers of programming carried on stations serving Orlando and Daytona Beach, even though those stations cannot and do not provide service to many of WAYK's viewers. That is precisely the opposite result from what was intended for Section 73.658(m).

IV. The Just Solution Is a Waiver of Section 73.658(m)

In order to overcome this problem and honor the intent of the Commission's allocations scheme, WAYK hereby seeks a waiver of the Commission's territorial exclusivity rule. WAYK submits that the requested waiver is fully consistent with the Commission's overall goals and objectives and would serve the public interest. It should take the form of a declaratory ruling to the effect that the clause in Section 73.658(m) referring to hyphenated markets does not apply to WAYK, so that is is clear that Orlando stations will not be allowed to obtain exclusivity against WAYK.

In amending the market designation rule last year, the Commission noted that both WMOD and WTGL served communities that were encompassed by the Grade B contours of most of the Orlando-Daytona Beach stations, and that Orlando cable subscribers could not receive those stations, even though they